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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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LEO CONO,

Plaintiff,

v.

REGINA RICHARDS, *et al.*,

Defendants.

Case No. 2:18-cv-01845-RFB-GWF

**ORDER AND REPORT AND  
RECOMMENDATION**

This matter is before the Court on Plaintiff's Application to Proceed *in Forma Pauperis* (ECF No. 1), filed September 21, 2018.

**BACKGROUND**

Plaintiff brings this action alleging violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), pursuant to 18 U.S.C. § 1958, §1959, §1961, §1962, §1963, §1964, et seq. Plaintiff names 119 defendants for events seemingly related to the denial of unemployment insurance in New Jersey, denial of rights in California and New York, and various other criminal violations. Plaintiff's complaint is void of the specific relief requested.

**DISCUSSION**

**I. Application to Proceed *In Forma Pauperis***

Plaintiff filed this instant action and attached a financial affidavit to his application and complaint as required by 28 U.S.C. §1915(a). Reviewing Plaintiff's financial affidavit pursuant to 28 U.S.C. §1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. As a result, Plaintiff's request to proceed *in forma pauperis* in federal court is granted.

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## II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to 28 U.S.C. §1915(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. §1915(e)(2). A complaint, or portion thereof, should be dismissed for failure to state a claim upon which relief may be granted “if it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to relief.” *Buckey v. Los Angeles*, 968 F. 2d 791, 794 (9th Cir. 1992). A complaint may be dismissed as frivolous if it is premised on a nonexistent legal interest or delusional factual scenario. *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989). Moreover, a “finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). When a court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F. 3d 1103, 1106 (9th Cir. 1995).

The Court shall liberally construe a complaint by a *pro se* litigant. *Eldridge v. Block*, 832 F. 2d 1132, 1137 (9th Cir. 2007). However, liberal construction may not be used to supply an essential element of the claim absent from the complaint. *Bruns v. Nat’l Credit Union Admin.*, 12 F. 3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Board of Regents*, 673 F. 2d 266, 268 (9th Cir. 1982)).

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of America*, 232 F. 3d 719, 723 (9th Cir. 2000). A properly pled complaint must provide a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual

1 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the  
2 elements of a cause of action.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1947 (2009) (citing *Papasan*  
3 *v. Allain*, 478 U.S. 265, 286 (1986)). Allegations in a *pro se* complaint are held to less stringent  
4 standards than formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980);  
5 *Haines v. Kerner*, 404 U.S. 519, 520-21) (1972) (per curium).

### 6 **III. Instant Complaint**

#### 7 **A. Nevada Defendants**

8 Plaintiff asserts claims against numerous Nevada residents, including private citizens and  
9 governmental entities (“Nevada Defendants”).<sup>1</sup> Plaintiff’s complaint consists of various  
10 arguments surrounding RICO claims and a list of documents which purports to be evidence of  
11 Nevada Defendants conspiring against him. Plaintiff’s complaint is incoherent and frivolous.  
12 The complaint fails to provide dates or factual allegations as to how the Nevada Defendants have  
13 allegedly violated his rights. As a result, the Court will dismiss Plaintiff’s claims against all  
14 Nevada Defendants without prejudice. Plaintiff may attempt to amend his complaint to allege  
15 viable claims against these defendants.

#### 16 **B. Jurisdiction over Nonresident Defendants**

17 As noted above, Plaintiff’s complaint rest, in part, on actions allegedly taken by  
18 governmental entities and their employees who reside outside of Nevada, i.e., in California, New  
19 Jersey and New York. The Court finds that Plaintiff has failed to state a claim for which relief  
20 can be granted because the Court lacks personal jurisdiction and venue over the persons or  
21 entities to be sued, as detailed herein. Plaintiff asserts claims against employees of the Bergen  
22 County New Jersey Unemployment Insurance Office, the State of New Jersey Department of  
23 Labor, New Jersey Unemployment Insurance Appeal Tribunal, Mr. Bailey of the New Jersey  
24 Department of Labor, New Jersey Fraud Reporting and Embezzling Reporting Department,  
25 Employees, Maria, Cindy and Ron Marino of the Trenton, New Jersey Department of Labor,

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26 <sup>1</sup> These include: Myna Cox, State of Nevada EBT, Kelly Cantrelle, State of Nevada Welfare, Steve Kisher, Kelly  
27 O’Meara, Kerry Hutchings, Shawna Quemada, Tiffany Evans, Naomi Lewis, Sandy Tete, Mary Catholic Charities,  
28 Sharon Jasper, A. Malone, Clark County Welfare and Social Services, Nevada EBT Food Stamps, Las Vegas Rescue  
Mission Homeless Facilities, Luis – USPS General Delivery, U.S District Courts – District of Nevada, Gloria Navarro  
– Chief Judge of U.S. Courts District of Nevada.

1 New Jersey Department of Child Protection, The New Jersey Department of Children and  
2 Families, New Jersey Department of Child Support, Judge Judy Mizdol of State of New Jersey  
3 Bergen County, New Jersey Records and Coroners Offices, Employees, Aida Rodriguez and  
4 Hilda Rodriguez from the State of California General Welfare Office, General Relief State of  
5 California, State of New York Department of Labor – Unemployment Insurance, State of New  
6 York Department of Labor Information Technology Department, Employee Robert Reardon –  
7 State of New York Unemployment Department of Labor, New York Unemployment Claim  
8 Advocate, New Jersey Unemployment Insurance Appeals, New York New Jersey  
9 Unemployment Insurance Appeals, California Unemployment Insurance Appeals, California  
10 General Relief Appeals, California General Relief Fraud/ Embezzlement Reporting, California  
11 EBT/Food Stamps Fraud/ Embezzlement Reporting, State of California Department of Labor,  
12 Employees Joyce Lee and Doris State of California Labor Unemployment Insurance Department,  
13 Employees, Keisha Pierson, Jillian Telerico, and Jahara State of New Jersey Child Protection  
14 Services, Kerry Bathe from Property Manager Avalon Huntington Beach, Coroner’s office for  
15 the City of Santa Ana California, Public Defender Nina Patel and Keenan O’Connor Assistant  
16 Prosecutor in Orange County California, Federal Government Agency – Internal Revenue  
17 Services, Avalon Bay Communities in California, State of New York Marriage and Divorce  
18 Records Bureau for Westchester County, California Orange County Homeless Shelters,  
19 California Disability, California Optima Medical Insurance, Global Hospitals of Orange County  
20 California, Medical Clinics in Orange County California, CVS Pharmacies in Orange County  
21 California, Mission Hospital and Dr. Alexander Fan in Orange County California, U.S. Courts  
22 Central District – Southern Division in Santa Ana, California; U.S. Courts 9th Circuit Court of  
23 Appeals in San Francisco California, Judge James V. Selna in Santa Ana, California  
24 (“Nonresident Defendants”). The Court must therefore determine whether it has jurisdiction.

### 25 **1. Subject Matter Jurisdiction**

26 Federal district courts are courts of limited jurisdiction, deriving their power to hear cases  
27 from specific congressional grants of jurisdiction. *United States v. Summer*, 226 F. 3d 1005,  
28 1009 (9th Cir. 2000). Limited jurisdiction means that federal courts (1) possess only that power

1 authorized by the Constitution or a specific federal statute and (2) do not have jurisdiction over a  
2 matter simply because the alleged wrong occurred in the same city, county, or state in which the  
3 court sits. See U.S. Const. art. III, § 2, cl. 1. Generally, subject matter jurisdiction may derive  
4 from diversity of the parties, which are “civil actions where the matter in controversy exceeds the  
5 sum or value of \$75,000 ... and is between citizens of different States,” or from claims involving  
6 a federal question, which are “civil actions arising under the Constitution, laws, or treaties of the  
7 United States.” See 28 U.S.C § 1331; 28 U.S.C. § 1332.

8 Rule 8(a)(1) of the Federal Rules of Civil Procedure states that a “claim for relief must  
9 contain ... a short plain statement of the grounds for the court’s jurisdiction.” Fed. R. Civ. P.  
10 8(a)(1). The burden of proving jurisdiction rests on the party asserting jurisdiction. See *McNutt*  
11 *v. Gen. Motors Acceptance Corp.* 298 U.S. 178, 182–83 (1936). Plaintiff alleges the grounds for  
12 subject matter jurisdiction under the basis of federal question because the Defendants allegedly  
13 “violated the RICO laws.” The Court agrees and therefore finds it has subject matter jurisdiction  
14 over the Plaintiff’s civil RICO claims.

## 15 **2. Personal Jurisdiction**

16 “For a court to exercise personal jurisdiction over a nonresident defendant consistent with  
17 due process, the defendant must have ‘certain minimum contacts’ with the relevant forum ‘such  
18 that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial  
19 justice.’” *CollegeSource, Inc. v. Academeyone, Inc.*, 653 F. 3d 1066, 1073 (9th Cir. 2011), citing  
20 *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945). Under  
21 *International Shoe*, personal jurisdiction over a defendant may be established by showing that it  
22 has such continuous and systematic contacts with the forum that it is generally subject to suit in  
23 the jurisdiction (“general jurisdiction”), or by showing that the defendant has sufficient minimum  
24 contacts with the forum arising out of, or relating to the transaction that is the subject matter of  
25 the litigation (“specific jurisdiction”). *CollegeSource*, 653 F. 3d at 1074-76.

26 A plaintiff must overcome a “fairly high” standard to establish general jurisdiction.  
27 *Brand v. Menlove Dodge*, 796 F.2d 1070, 1073 (9th Cir.1986). A defendant’s contacts must “be  
28 of the sort that approximate physical presence.” *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*,

1 223 F.3d 1082, 1086 (9th Cir. 2000). “Factors to be taken into consideration are whether the  
2 defendant makes sales, solicits or engages in business in the state, serves the state's markets,  
3 designates an agent for service of process, holds a license, or is incorporated there.” *Id.* Specific  
4 jurisdiction is analyzed under a three-prong test: (1) the non-resident defendant must  
5 purposefully direct his activities or consummate some transaction with the forum or a resident  
6 thereof; or perform some act by which he purposefully avails himself of the privilege of  
7 conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2)  
8 the claim must be one which arises out of or relates to the defendant's forum related activities;  
9 and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e., it  
10 must be reasonable. *CollegeSource*, 653 F.3d at 1076. Plaintiff does not allege that any of the  
11 Nonresident Defendants are subject to general jurisdiction in Nevada. Nor does he argue that the  
12 Court has specific personal jurisdiction over the Nonresident Defendants.

### 13 3. Venue

14 The Court also may *sua sponte* raise the issue of venue where the defendant has not yet filed  
15 a responsive pleading and the time to do so has not run. *Costlow v. Weeks*, 790 F.2d 1486, 1488  
16 (9th Cir. 1986). The following factors govern proper venue for an action:

- 17 (1) a judicial district in which any defendant resides, if all defendants  
18 are residents of the State in which the district is located;
- 19 (2) a judicial district in which a substantial part of the events or  
20 omissions giving rise to the claim occurred, or a substantial part of  
21 property that is the subject of the action is situated; or
- 22 (3) if there is no district in which an action may otherwise be brought as  
provided in this section, any judicial district in which any defendant  
is subject to the court's personal jurisdiction with respect to such  
action.

23 28 U.S.C. § 1391(b)(1)-(3). If a matter does not adhere to any of § 1391's provisions, the matter  
24 may be subject to transfer or dismissal under 28 U.S.C. § 1406(a). The district court has  
25 discretion in determining whether to dismiss or transfer an action. *King v. Russell*, 963 F.2d  
26 1301, 1304 (9th Cir. 1992).

27 Here, the Court finds that the proper forum for any Nonresident Defendant as listed above, is  
28 the state in which that entity or employee resides. Plaintiff does not allege that Nonresident

1 Defendants reside or are located in Nevada as required under § 1391(b)(1). In fact, all  
2 Nonresident Defendants are residents of California, New Jersey or New York. Second, Plaintiff  
3 does not establish that a substantial part of the events underlying his allegations occurred in  
4 Nevada as required under § 1391(b)(2)— all events occurred in California, New Jersey or New  
5 York. Finally, Plaintiff's claims do not invoke the venue provisions under § 1391(b)(3). Rather,  
6 Plaintiff's complaint alleges that the "District of Nevada Federal Court is the only appropriate  
7 venue in this matter because Plaintiff is a Las Vegas, Nevada resident." *Complaint* (ECF No. 1-  
8 1), 8. Plaintiff's claims should therefore be raised before the appropriate courts in California,  
9 New Jersey and New York. Moreover, even if the Court were inclined to find that venue was  
10 proper in this district, Plaintiff's complaint still suffers from the jurisdictional deficiencies  
11 discussed above.

12 Because Plaintiff fails to allege that this Court has personal jurisdiction over the Nonresident  
13 Defendants, or that this district is the proper venue for his complaint, the Court will recommend  
14 Plaintiff's complaint against all Nonresident Defendants be dismissed.

### 15 **C. Judicial and Prosecutorial Immunity**

16 Federal prosecutors are entitled to absolute immunity from a civil rights action for  
17 damages when he or she performs a function that is "intimately associated with the judicial phase  
18 of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976); *Genzler v.*  
19 *Longanbach*, 410 F. 3d 630, 636 (9th Cir. 2005). Similarly, judges and those performing quasi-  
20 judicial functions are immune from damages for acts performed within their judicial capacities.  
21 *Nixon v. Fitzgerald*, 457 U.S. 731, 766 (1982); *see also Miller v. Davis*, 521 F.3d 1142, 1145  
22 (9th Cir. 2008); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (en banc) (stating that  
23 "[j]udges . . . are absolutely immune from damage liability for acts performed in their official  
24 capacities"); *Gregory v. Thompson*, 500 F.2d 59, 62 (9th Cir. 1974) ("A seemingly impregnable  
25 fortress in American Jurisprudence is the absolute immunity of judges from civil liability for acts  
26 done by them within their judicial jurisdiction.").

1 Although the allegations remain unclear, Plaintiff asserts claims against Chief Judge  
2 Gloria Navarro for conduct undertaken in her official judicial capacity. As a result, the Court  
3 recommends dismissal of Plaintiff's claim against Chief Judge Navarro with prejudice for failure  
4 to state a claim upon which relief can be granted.

5 If Plaintiff elects to proceed in this action by filing an amended complaint, he is informed  
6 that the court cannot refer to a prior pleading in order to make his amended complaint complete.  
7 Local Rule 15-1 requires that an amended complaint be complete without reference to any prior  
8 pleading. This is because, as a general rule, an amended complaint supersedes the original  
9 complaint. *See Loux v. Rhay*, 375 F. 2d 55, 57 (9th Cir. 1967). Once Plaintiff files an amended  
10 complaint, as in an original complaint, each claim and the involvement of each defendant must  
11 be sufficiently alleged. Accordingly,

12 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed *In Forma Pauperis*  
13 (ECF No. 1) is **granted**. Plaintiff shall not be required to pre-pay the full filing fee of four  
14 hundred dollars (\$400.00).

15 **IT IS FURTHER ORDERED** that Plaintiff is permitted to maintain this action to  
16 conclusion without the necessity of prepayment of any additional fees or costs or the giving of  
17 security therefor. This Order granting leave to proceed *in forma pauperis* shall not extend to the  
18 issuance of subpoenas at government expense.

19 **IT IS FURTHER ORDERED** that Plaintiff's Complaint be **dismissed** without  
20 prejudice with leave to amend, in order to allege viable claims against the Nevada Defendants.  
21 Plaintiff shall have until **November 9, 2018**, to file an amended complaint correcting the noted  
22 deficiencies solely with respect to the Nevada Defendants.

23 **RECOMMENDATION**

24 **IT IS HEREBY RECOMMENDED** that Plaintiff's claims against all Nonresident  
25 Defendants be **dismissed** for lack of personal jurisdiction and venue.

26 **IT IS FURTHER RECOMMENDED** that Plaintiff's claim against the Honorable Chief  
27 Judge Gloria Navarro be **dismissed**, with prejudice for failure to state a claim upon which relief  
28 can be granted.



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